United Nations CCPR/C/SR.2432

International Covenant on Civil and Political Rights

Distr.: General
11 April 2007

Original: English

Human Rights Committee
Eighty-ninth session

Summary record of the 2432nd meeting
Held at Headquarters, New York, on Friday, 16 March 2007, at 10 a.m.

Chairperson: Mr. Rivas Posada

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07-27229 (E)

The meeting was called to order at 10.10 a.m.

General comments of the Committee

Draft general comment No. 32 on article 14 of the Covenant (CCPR/C/GC/32/CRP.1/Rev.4)

1. **Mr. Kälin**, speaking as Rapporteur for the draft general comment on article 14, said that the Committee would be carrying out its second reading of the draft general comment, the final version of which would, he hoped, be adopted by the end of the current session. He reminded the Committee that it had decided that the comment should be of a technical nature, its purpose being to codify the Committee's extensive case law. A number of States parties had submitted remarks on the draft general comment; however, none had been received from any treaty body until just before the meeting, from the Committee on the Rights of the Child; he would attempt to reflect those remarks to the extent possible in the Committee's discussion. One problem in preparing the draft comment had been the submission of most observations after the deadline, which had nonetheless been clearly announced from the outset. The Committee therefore had two documents before it: the draft general comment (CCPR/C/GC/32/CRP.1/Rev.4) and a paper setting out proposed amendments received after the deadline. Regarding those additional proposals, question marks indicated which points he was not sure were worth incorporating. He had taken the liberty of excluding proposals going beyond the scope of the draft general comment or concerning issues that the Committee had already discussed in detail and on which it had taken a firm position. Those members of the Committee who wished to see a comprehensive list of submissions received after the deadline should contact the Secretariat.

2. For the most part, the observations received had been favourable, requesting clarification or further information rather than stating major concerns. The Committee's stance on various issues appeared to be widely accepted, as the large majority of States parties' submissions had been simply to inform the Committee that their legislation was in line with the Committee's position and that they had no proposals to make. He himself had made some minor proposed changes to the text that he would explain when appropriate.

3. **The Chairperson** thanked Mr. Kälin for his hard work and expressed the hope that the Committee would indeed approve the draft general comment at the current session. He suggested adopting the document paragraph by paragraph, with explanations being given by Mr. Kälin when necessary.

4. *It was so decided.*

Paragraph 1

5. *Paragraph 1 was adopted.*

Paragraph 2

6. **Ms. Wedgwood** suggested that the words "serve by" should be replaced with "serve as".

7. **Ms. Chanet** proposed that, in the French text, the words "*servent, par des moyens de procédure*" in the first sentence should be changed to "*contribuent, grâce à des moyens de procédure*".

8. *Paragraph 2, as amended, was adopted.*

Paragraph 3

9. **Mr. Iwasawa** recalled the Committee's discussion about whether article 14, paragraph 3, might apply to extradition proceedings and wondered if that should be taken into account in the draft general comment.

10. **Mr. Kälin** said his understanding of the outcome of the Committee's debate was that article 14, paragraph 3, did not apply directly to extradition proceedings and therefore paragraph 3 of the draft general comment was in line with the clear language of article 14. Paragraph 64 of the draft general comment referred to expulsion proceedings; that would be the place to decide whether or not to include discussion on extradition.

11. **Ms. Wedgwood** said that while she understood what Mr. Kälin meant by the reference to "determination of criminal charges" in the fifth sentence, she wondered whether there might be another way to express the idea, as it seemed to carry a different meaning in the draft general comment than in article 14, paragraph 3.

12. **Sir Nigel Rodley** suggested replacing the phrase concerned with "procedures relating to the preferment and determination of criminal charges" but pointed out that, in any case, paragraph 3 was only a general provision.

13. **The Chairperson** recalled the previous day's discussion of a communication, in which article 14 had been thought to apply to extradition proceedings in the case of manifest arbitrariness.

14. **Ms. Chanet** said that the problem lay in the way in which that article had been formulated. As clearly stated in the draft general comment, the guarantee of equality set out in the first sentence of article 14, paragraph 1, applied regardless of the nature of proceedings, meaning that extradition could be included. However, the second sentence entitled individuals to "a fair and public hearing by a competent, independent and impartial tribunal" only if they faced criminal charges or a civil suit, neither of which could apply to extradition. Had article 14 been better written, each of the guarantees would apply to all proceedings, including extradition proceedings. In future discussions on extradition, the Committee could decide whether it wished to change its interpretation of article 14; however, for the time being, she suggested adopting draft paragraph 3 as it stood.

15. **Mr. Kälin** agreed with Ms. Wedgwood that the language contained in paragraph 3 was problematic but said that the Committee should not attempt to resolve the extradition issue in that paragraph. He nonetheless suggested replacing the phrase "guarantees that are limited to procedures regarding the determination of criminal charges" with "guarantees available or protecting persons charged with a criminal offence" in keeping with the language used in article 14, thus providing a more open interpretation. He insisted that paragraph 3 of the draft general comment was merely a description of the structure of article 14; interpretation would come later.

16. *Paragraph 3, as amended, was adopted.*

Paragraph 4

17. **Ms. Wedgwood** suggested changing the expression "its guarantees" to "Covenant guarantees" for clarity's sake.

18. *Paragraph 4, as amended, was adopted.*

Paragraph 5

19. **Mr. Kälin** said that paragraphs 5, 6 and 7 served to reorganize the presentation of issues that had been somewhat muddled in the original general comment. Paragraph 5 now dealt with limitations to article 14 guarantees, paragraph 6 with derogations and paragraph 7 with reservations. Previously, there had been a text on limitations on article 14 guarantees stating that those guarantees could not be limited except where such limitations were specifically provided for. However, the Committee had realized that was too broad a statement. He had therefore tried to find a formulation that was general enough not to have to deal with all the aspects of limitation in paragraph 5.

20. **Ms. Chanet** expressed some reservations to the paragraph: the Committee should not seem to allow rights that were not provided for by the Covenant to be limited by law, as it could lead a State to consider that such limitations were normal and that it merely needed to justify their extent and proportionality.

21. **Mr. Amor** said he thought there was no reason to analyse limitations in paragraph 5 of the draft general comment and therefore suggested changing the paragraph to read: "*De nombreuses garanties telles que celles énoncées à l'article 14 ne peuvent être limitées.*" In addition, should the paragraph be adopted as it was, the accent on the "a" in the phrase "*le droit qu'à*" should be removed.

22. **Ms. Wedgwood** said that she would prefer the phrase "cannot be limited" to appear before the bracket in the first line of paragraph 5 in order to avoid juxtaposition of the words "limited" and "limitations". Furthermore, she found the expression "most of the rights of the accused" strange, as it seemed to go against the intention behind the whole paragraph, namely, to caution States against using emergencies to excuse procedural default. In addition, as article 4 of the Covenant did not refer to article 14, she feared the Committee was going beyond the scope of the Covenant, unless mention was made of general comment No. 29.

23. **Mr. Shearer**, referring to Ms. Chanet's point, suggested inserting a footnote reference to general comment No. 29 after the words "where permissible". Although it was not feasible to cover all possible situations in paragraph 5, there was clearly a right to derogate from the Covenant in times of emergency. In the last sentence, the definite article should be inserted before "right concerned".

24. **Sir Nigel Rodley** said he believed the Committee was arguing at cross purposes. His first impression had been that paragraph 5 was about derogations as per

general comment No. 29. In fact, however, the paragraph appeared to be stating that where there were provisions for limitations, they had to be stipulated by law, necessary and proportionate. It should be made clearer that the draft general comment was referring to actual limitations, such as the possibility of a trial being closed, in order to avoid misunderstandings. .

25. **Ms. Chanet** said that she remained concerned about drawing up general comments on such limitations. The Committee was not competent to set limitations on certain rights and not on others; where limitations existed, they were already identified in the text of the Covenant. She believed paragraph 5 was not in accordance with the Covenant and suggested deleting it entirely; each limitation would be reviewed where necessary in other paragraphs of the general comment.

26. **Ms. Wedgwood** stressed that the purpose of general comments was to make the Committee's jurisprudence widely available and that the distinction between limitations and derogations would not be easily understandable to the ordinary reader. It was also important to offer inspiration. For that reason, it might be better to start in a positive spirit and leave any mention of limitations and derogations to the end.

27. **Mr. Amor** said that the last part of paragraph 5 was unnecessary. The first part should be retained, but with adjustments, to include in particular a stipulation that the guarantees could not be limited unless so provided by the Covenant. However, the question then arose of whether there was any point in retaining the paragraph.

28. **The Chairperson** said that the two options before the Committee were either to spell out that where limitations were admissible they must be accompanied by the necessary guarantees or to discard the paragraph entirely.

29. **Mr. Kälin** recognized the difficulty of addressing the issue of limitations in just one paragraph, and in that connection agreed with Ms. Chanet's remarks. Moreover, the distinction between limitations and derogations could prove confusing for the ordinary reader. He proposed that the paragraph should be deleted.

30. *Paragraph 5 was deleted.*

Paragraph 6

31. **Mr. Kälin** said that in the English version of paragraph 6 the first sentence should be deleted, as it had been in the French and Spanish versions. He welcomed the insertion before the last sentence, under the additional proposals, of the words "Similarly, as article 7 is also non-derogable in its entirety, no evidence obtained through a violation of article 7 may be admitted in any proceedings covered by article 14, including during a state of emergency."

32. **Ms. Wedgwood** said that great care had to be taken in laying down exclusionary evidentiary rules. Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained an important proviso as to the possibility of invoking a statement made as a result of torture; it made an exception where such a statement could be used against a person accused of torture as evidence that the statement had indeed been made. Such a proviso might usefully be included in the general comment under consideration. Moreover, the threshold for what constituted cruel, inhuman or degrading treatment should be low. She expressed concern that the Committee might be limiting the readiness of States parties to refer to treatment in such terms so as to ensure that statements obtained thereby would not be excluded as evidence. The wording of the proposed insertion should be modified in that light.

33. **Sir Nigel Rodley** agreed with Ms. Wedgwood that language based on that used in article 15 of the Convention against Torture would be useful in ensuring that the perpetrators of torture were not protected by the rule under discussion. While the Committee had traditionally held article 7 of the Covenant to have an exclusionary effect, its relevant case law was perhaps not altogether solid. The Committee's position, like that of the European Court of Human Rights, was that a person should not be sent to a country where he or she would be in danger of being subjected to cruel, inhuman or degrading treatment. He emphasized that the aim of the Committee's general comments was to clarify and confirm its traditional practice, not to change it, nor to put the Committee at odds with other treaty bodies.

34. **Ms. Wedgwood** said that if a Government sent a person to a country where there was a risk of such treatment, that Government might be said to have caused it. She noted that statements obtained under

torture or through cruel, inhuman or degrading treatment were not usually regarded as probative. The Committee's case law should be checked and any departure from it should only be made with full knowledge of what was entailed.

35. **Mr. Kälin** concurred with Ms. Wedgwood's proposal to include a reference to article 15 of the Convention against Torture. The language could be based on paragraphs 7 and 15 of general comment No. 29.

36. **Ms. Wedgwood** reminded the Committee that paragraph 15 of general comment No. 29 stated that "The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights." It was indisputable that protection against cruel, inhuman or degrading treatment was a non-derogable right.

37. **The Chairperson** said he took it that the Committee agreed to the insertion of the new sentence read out by Mr. Kälin and the inclusion of a reference to article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

38. *Paragraph 6, as amended, was adopted.*

Paragraph 7

39. **Mr. Amor** said that, while he had no objection to the proposed paragraph 7, it might usefully be consolidated by the addition of the words "The Committee examines the validity of reservations to the provisions of the Covenant."

40. **Sir Nigel Rodley** said that he understood that Mr. Amor wished to refer indirectly to discussions with other treaty bodies. However, to do so might be misleading since the Committee had a general comment on reservations and it should not give the impression that it might be wishing to reconsider it. Mr. Amor's suggestion was factually correct, but that was perhaps not the place for it.

41. **Mr. Kälin** said that he agreed in substance with Mr. Amor but that paragraph 7 was not the appropriate place to take up that issue, which would make for an imbalance.

42. **Ms. Chanet** expressed concern that the proposed addition might lead to other reservations being also regarded as not acceptable.

43. **Sir Nigel Rodley** pointed out that the paragraph in question reproduced the wording of the last sentence in paragraph 8 of the Committee's general comment No. 24 on reservations.

44. **Mr. Amor** said that he would not insist on his suggestion.

45. **Mr. Kälin** proposed that the paragraph be kept unchanged except for the addition of a footnote referring to general comment No. 24.

46. *Paragraph 7, as amended, was adopted.*

Paragraph 8

47. **Mr. Amor** proposed that the words "and which therefore constitutes a judicial body" should be added at the end of paragraph 8.

48. **Ms. Wedgwood** raised concerns that the door might have been left open to the introduction in that paragraph of issues relating to arbitration. She proposed to avert that risk by amending the words "whenever domestic law entrusts a body with a judicial task" to read "whenever domestic law entrusts a publicly constituted body with a judicial task".

49. **Mr. Shearer** said that the word "judicial" would seem to exclude the possibility of arbitration. He conceded, however, that it might not be so in all countries or languages and therefore agreed to Ms. Wedgwood's proposed addition.

50. **Mr. Kälin** said that he understood the reference to domestic law to exclude arbitration clauses but could accept the addition of the words "publicly constituted".

51. **Ms. Palm** agreed with Ms. Wedgwood's proposal but said she was less sure about that made by Mr. Amor, since in some countries bodies that were not necessarily of a judicial character could be entrusted with judicial tasks.

52. **Mr. Bhagwati** observed that arbitration proceedings were part of judicial proceedings and that their inclusion was therefore in order. He was therefore not in favour of Ms. Wedgwood's amendment; however, he supported Mr. Amor's proposal.

53. **Mr. Kälin** said he was not convinced that "publicly constituted body" was the appropriate term; even a private body, for example, a bar association, could have authority under domestic law to undertake tasks of a judicial nature, such as imposing disciplinary measures, in which case article 14 would apply. Likewise, in some States traditional or customary conflict resolution mechanisms, while not necessarily publicly constituted, were entrusted under the law with judicial tasks and article 14 would also apply to them. The French translation of the text should be corrected, since it could be interpreted as implying that the paragraph could cover arbitration, which was not the case with the English text.

54. **Ms. Chanet** said that if domestic law included arbitration then article 14 would be applicable to such cases. However, in the interests of clarity, the words "*confiée par la loi nationale*" should be inserted in the second sentence of the French text, following "*tout organe exerçant une fonction juridictionnelle*".

55. **Ms. Wedgwood** said that the problem lay with the final clause of the paragraph, which could be interpreted too broadly as including arbitration. Deletion of the words "i.e. with the task of deciding a particular legal dispute between parties" would resolve the issue.

56. **Mr. Iwasawa** said he could support the text either as drafted or with the deletion suggested by Ms. Wedgwood. He shared Ms. Palm's concern about the addition suggested by Mr. Amor and pointed out that administrative committees, for example, were sometimes charged with settling disputes. With regard to the issue of arbitration, he recalled that the text referred only to the first sentence of article 14, paragraph 1, of the Covenant. The principle of equality also applied to arbitration.

57. **Mr. Sanchez-Cerro** said that decisions taken in private proceedings could nonetheless have public effects; arbitration and civil cases often involved tasks of a judicial nature. He believed the paragraph should be as general as possible and agreed that the last clause should be deleted.

58. **Ms. Wedgwood** said the notion of equality of arms was implied in article 14, paragraph 1, of the Covenant. In arbitration, however, the field was not always even for both parties. That was why she believed it was necessary to avoid any misunderstanding and delete the last clause of paragraph 8.

59. **Mr. Shearer** asked whether the reference to footnote 3 would be retained if that clause was deleted.

60. **Mr. Kälin** supported the deletion suggested by Ms. Wedgwood; footnote 3 would remain.

61. *Paragraph 8, as amended, was adopted.*

Paragraph 9

62. **Ms. Chanet** said that, in the last line of the paragraph, the word "judicial" should be deleted, because the text also applied to administrative proceedings. Furthermore, in the French text, the words "*ne fassent pas l'objet d'une discrimination*" should be replaced by "*ne fassent l'objet d'aucune discrimination*".

63. **Mr. Amor** said the word "*judiciaire*" in the last line of the French text referred to a specific type of proceeding and should be replaced by "*juridictionnelle*".

64. **Ms. Chanet** remarked that the word "*juridictionnelle*" could also be interpreted as excluding administrative proceedings.

65. **Sir Nigel Rodley** suggested that the words "judicial proceedings" could be deleted and replaced by "to the proceeding in question", given that the type of proceeding had been defined in paragraph 8.

66. **Mr. Kälin** suggested that the word "any" should be inserted before "discrimination".

67. *Paragraph 9, as amended, was adopted.*

Paragraph 10

68. **Mr. Kälin** said the third sentence had been added to specifically take into account the situation of migrants, refugees and displaced persons. A reference had been inserted in the seventh sentence to explicitly mention de jure and de facto access to the courts. The Chairperson of the Committee on the Rights of the Child had suggested the inclusion of a specific reference to children suffering from HIV/AIDS and children and orphans outside their country of origin. He himself would prefer a briefer reference to the situation of children.

69. **Sir Nigel Rodley** said he was not sure that a reference to children should be added. If it was, he felt

it would be more appropriate in the third sentence than in the last, which seemed to highlight displaced persons.

70. **Ms. Wedgwood** said the Committee's general comments should deal with principles of law; the last sentence, by referring to reports of States parties, seemed to detract from the authority of paragraph 10. If the sentence was retained a reference such as "under the Covenant" should be inserted following "States parties". She wondered if it served any purpose to reiterate the principle of equality of access in the first sentence, given that the purpose of a general comment should be to explain and develop the interpretation of the Covenant. She was also concerned that the scope of the last part of the third sentence, relating to the right of access to a State party's tribunals by individuals no longer in the territory of that State party but who wished to return to it, was too broad. Many States required at least one of the parties to a proceeding to be a citizen or resident.

71. **Mr. Shearer** agreed that the last sentence detracted from the paragraph and suggested it should be deleted. He also shared the concerns expressed by Ms. Wedgwood with regard to the third sentence. Regarding the first sentence, he felt the text should be reformulated to refer to the "very right of access to the courts itself".

72. **Ms. Chanet** said that although the Committee had always upheld the right of an individual to have access to the judicial system of the territory in which he was located, implying that individuals not in the territory of a State had a right of access to that State's judicial system was going too far.

73. **Ms. Palm** agreed that implying such a right of access was going too far and also supported the deletion of the last sentence.

74. **Mr. Kälin** suggested that: in the first sentence, the words "right of" should be inserted following "very" in the first sentence; in the third sentence, the words "or who want to return to such State" should be deleted, and the words "and unaccompanied children" should be inserted following the words "migrant workers"; and the last sentence should be deleted.

75. *Paragraph 10, as amended, was adopted.*

Paragraph 11

76. *Paragraph 11 was adopted.*

Paragraph 12

77. **Ms. Chanet** suggested that the adjective "judicial" qualifying "proceedings" should be deleted, in order to make the text more general, as the Committee had done in previous paragraphs.

78. **Mr. Kälin** said the paragraph had been included as a result of communication No. 779/1997, *Äärelä and Näkkäläjärvi v. Finland*, in respect of which the Committee had found that "a rigid duty under law to award costs to a winning party may have a deterrent effect on the ability of persons who allege their rights under the Covenant have been violated to pursue a remedy before the courts". The second sentence supported and explained the first. He believed the paragraph should be retained as written, subject to the amendment suggested by Ms. Chanet.

79. **Mr. Amor** said he would prefer to include some reference to the State assuming responsibility for all or part of any costs awarded. He would draft an alternative text for submission to the rapporteur.

80. **The Chairperson** said he took it that the Committee wished to defer further consideration of paragraph 12.

81. *It was so decided.*

Paragraph 13

82. **Mr. Kälin** said that, although the text of paragraph 13 had been adopted on first reading, uncertainties remained over its placement within the draft general comment as a whole. Some Committee members had felt that the paragraph should be incorporated into the section of the draft dealing with article 14, paragraph 5, of the Covenant. In his view, however, it should remain in its current location because its contents exceeded the scope of article 14, paragraph 5.

83. **Sir Nigel Rodley**, supported by **Mr. Shearer**, asked whether paragraph 13 had a purpose other than reiterating the effect of article 14, paragraph 5, of the Covenant.

84. **The Chairperson** stressed the importance of making affirmative, rather than negative, statements about the rights deriving from the Covenant.

85. **Ms. Chanet** agreed, pointing out that paragraph 13 referred to two distinct rights, one negative and one positive.

86. **Mr. Kälin**, responding to the query raised by Sir Nigel Rodley, recalled that the Committee had received several communications from individuals alleging violations of article 14, paragraph 1, on the ground that they had been denied access to the constitutional courts. Paragraph 13 was intended to make it clear that, while article 14, paragraph 1, of the Covenant did not entail a right to bring an appeal before all higher courts, the rights enshrined in article 14, paragraph 5, of the Covenant were still valid.

87. **Sir Nigel Rodley** suggested rephrasing the first part of paragraph 13 to read: "The right to equal access to a court, embodied in article 14, paragraph 1, includes the right to an appeal consistent with article 14, paragraph 5".

88. During its consideration of a number of communications relating to the death penalty, the Committee had taken the view that convicted persons had the right to lodge constitutional appeals; such cases might, however, fall within the scope of article 2 rather than article 14.

89. **Mr. Shearer** suggested rewording the first part of the sentence to read: "The right to equal access to a court, embodied in article 14, paragraph 1, does not entail a right to an appeal to an instance beyond the instance at which the conviction and sentence were reviewed."

90. **Ms. Chanet** enquired as to the exact wording of the relevant passage of the Committee's Views on communication No. 450/1991, *I.P. v. Finland*.

91. **Mr. Kälin** said that paragraph 13 did not refer only to criminal proceedings. It began by stipulating that article 14, paragraph 1, could not be invoked as grounds for obtaining the right of appeal to a higher instance in civil cases, and then went on to refer to other possible remedies.

92. In *I.P. v. Finland*, the author had filed a complaint against the national tax authorities with a view to bringing criminal proceedings. Having been denied the opportunity to bring such proceedings, he had also been denied the opportunity to appeal. In that connection, the Committee had stated: "As for the author's claim that he was denied the possibility of appeal, even where these matters do fall within the scope *rationae materiae* of article 14, the right to appeal relates to a criminal charge which is not here in issue. This part of the communication is therefore inadmissible under article 3." Perhaps it was already clear that the right to equal access to a court did not automatically entail a right to appeal at every level; in that case, the entire paragraph should be deleted.

93. **Mr. Amor** said that he was not in favour of deleting the whole paragraph.

94. **The Chairperson** expressed concern that paragraph 13 addressed two separate issues. It first spoke in general terms about the right of access to a court, enshrined in article 14, paragraph 1. However, it then referred to the specific right of appeal embodied in article 14, paragraph 5, which applied only to criminal cases.

95. **Ms. Chanet**, referring to the French version of the draft, suggested rewording the paragraph to read: "*Le droit à l'égalité d'accès à un tribunal, énoncé au paragraphe 1 de l'article 14, ne garantiet pas, en dehors d'autres droits garantis par le Pacte, un droit à une voie de recours.*"

96. **Mr. Kälin** said that, while Ms. Chanet's proposal would work in French and Spanish, he had yet to find a satisfactory equivalent in English. He suggested, however, that the paragraph might be simplified to read: "The right to equal access to a court concerns access to the first instance and does not deal with the appeals level."

97. **The Chairperson** stressed the importance of retaining a reference to article 14, paragraph 1, of the Covenant.

98. *Article 13, as amended, and subject to further minor drafting changes, was adopted.*

Paragraph 14

99. **Ms. Wedgwood** said that the specific reference to *Robinson v. Jamaica* might detract from the timeless nature of the draft general comment. She also pointed out that equality of arms was an extremely complex notion, and that the question of whether or not States were obliged to provide financial support to ensure that disadvantaged parties could bring suit in civil, as well as criminal, cases had not yet been settled.

100. **Ms. Chanet** said that the legal concepts underpinning paragraph 14 should not be diluted with references to specifics, namely the case of *Robinson v. Jamaica*. The third sentence should therefore be couched in more general terms. Furthermore, while the

penultimate sentence of the French text of paragraph 14 dealt with civil cases, the final sentence of that text, which referred to "*les témoins cités pour sa défense*", appeared to refer once again to criminal proceedings. Lastly, she proposed the addition of wording to clarify the concept of equality of arms in civil cases.

101. **Mr. Amor** proposed deleting the words "involved in judicial proceedings" from the second sentence, in keeping with the wording used in paragraphs 9 and 12.

102. **Mr. Kälin** said that the exceptional nature of *Robinson v. Jamaica* made it very difficult to refer to that case in general terms. He therefore proposed deleting the second half of the third sentence (from "or if the trial judge" to "unavailable or not ready").

103. In response to the issues raised by Ms. Chanet, he said that the French phrase "*cités pour sa défense*" did not appear in the English text. It should therefore be deleted. While he agreed that the concept of equality of arms stemmed from criminal law and did not necessarily apply, as such, to civil proceedings, the Committee's own jurisprudence made it clear that all parties to a civil case had the same procedural rights. Paragraph 14 should therefore reflect that state of affairs.

104. **Mr. Iwasawa** expressed his support for a reference to civil proceedings. However, the last sentence of paragraph 14 was problematic, since obliging a State party to provide the services of an interpreter, free of charge, in civil as well as criminal proceedings exceeded the scope of article 14 of the Covenant.

105. **The Chairperson**, referring to the fourth sentence of paragraph 14, suggested replacing the phrase "Equality of arms" with the words "Equality between the parties". He was unsure whether article 14 of the Covenant could be taken to mean that States parties must provide the free assistance of an interpreter, where necessary, in all types of cases.

106. **Ms. Chanet** said that article 14, paragraph 1, of the Covenant referred simply to the equality of all persons before the courts and tribunals, a concept that applied to civil, as well as criminal, cases. However, States parties were not obliged to provide the services of an interpreter in all civil cases, particularly since many such cases consisted only of written proceedings. That obligation could be invoked only when the defendant was required to appear in person. She wondered whether the draft general comment should reflect that situation.

107. **Mr. Kälin** agreed that the principle of equality between the parties applied to civil, as well as criminal, proceedings. Free legal assistance was a thorny issue: in some countries where members of certain social and/or ethnic minorities were unable to understand the official language used by the courts, the assistance of an interpreter was necessary to uphold the principle of equal treatment. He proposed amending the final sentence of paragraph 14 to read: "In exceptional cases, it also might require the free assistance of an interpreter."

108. *Paragraph 14, as amended, was adopted.*

The meeting rose at 1 p.m.